

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 28.02.2020

Pronounced On : 10.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

CMA No.3526 of 2010

G.Jayaraman Appellant/Petitioner

Vs

1. R.Vairamuthu
2. The United India Insurance Co. Ltd.,
No.135, Silingi Building, Greams Road,
IV Floor, Chennai - 600 006. ... Respondents/Respondents

[R1 was set exparte before the Claims Tribunal]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.4636 of 1999 dated 19.10.2006, on the file of the Motor Accidents Claims Tribunal [IV Judge, Small Causes Court], Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For Respondents: Mr.G.Udayasankar (for R2)

R1- Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/petitioner challenging the judgment and decree dated 19.10.2006 passed in MACTOP No.4636 of 1999, on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

2. For the sake of convenience, the parties are referred to, as per the litigative status before the Claims Tribunal.

3. It is a case of injury. The case of the petitioner is that on 13.08.1999 by 13.00hrs, when the petitioner was

travelling as a passenger, in a Metropolitan Transport Corporation bus, bearing Regn.No.TN01-N-3360, proceeding from South to North direction at Velacherry 100 ft road, a lorry bearing Regn.No.TCH-8923 came from the opposite direction and the same was driven by its driver in a rash and negligent manner endangering to the public safety and hit the said stage carriage bus on the right back portion. Consequently, the petitioner who was sitting in the back portion of the said bus, sustained grievous and multiple injuries all over the body.

3(i). At the time of accident, petitioner was aged about 37 years, employed as a Grade-I Police Constable and earning a sum of Rs.4,500/- per month. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending vehicle. The petitioner claimed a sum of Rs.2,75,000/- towards total compensation. According to him, both the respondents are jointly and severally liable to pay compensation.

4. Before the Claims Tribunal, the 1st respondent remained exparte. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent-Insurance Company denied the accident itself as false and stated that only due to the negligent act of the injured, the accident occurred. According to him, the accident would have occurred only because of the reason that the petitioner would have protruded his right hand outside the bus. Hence, the 2nd respondent is not liable to pay compensation. The respondent denies the age, occupation and monthly income of the petitioner. The petitioner is not entitled to a sum of Rs.18,000/- towards loss of income. The compensation claimed by the petitioner is false and imaginary. The claim of the petitioner is exorbitant and thus, the 2nd respondent sought for dismissal of the claim petition.

5. Before the claims tribunal, the petitioner examined himself as PW1. Further, the Doctor who issued disability certificate to the claimant was examined as PW2. The claimant has exhibited 13 documents as Exs.P1 to P13, to prove his claim. On the side of the respondents neither oral nor documentary evidence was let in.

6. Having considered all the materials placed before it, the claims tribunal held that Rs.1,56,025/- is the appropriate compensation to meet the ends of justice. However, it has been concluded that petitioner has also contributed some negligence and therefore he is entitled to 50% of the total compensation fixed and passed an award accordingly.

7. Challenging the same, the petitioner is before this Court with the present Civil Miscellaneous Appeal.

8. Heard Mr.K.R.Ponnusamy, learned counsel for the petitioner/appellant, Mr.G.Udayasankar, learned counsel appearing on behalf of the 2nd respondent-Insurance Company and perused the materials available on record.

9. The learned counsel for the appellant/petitioner would contend that though the petitioner would have protruded his right hand outside the bus, it is the duty of the driver of the vehicle, which came from opposite direction, to proceed his vehicle after leaving some gap from the right side of the bus, in which the petitioner was travelling. But in this case, even after seeing the position of the petitioner, the driver of the 1st respondent's vehicle came in a rash and negligent manner and dashed against the right side of the bus in which the petitioner was travelling.

10. In support of the claim made by him, the learned counsel for the appellant/petitioner relied on the judgment of the Kerala High Court in O.Mammachan Vs. Kerala State Road Transport Corporation and another, reported in 1995 AIHC 2069, wherein at paragraph Nos.8 to 11, it was held as follows:

"8. The only question to be considered in this appeal is whether the appellant has contributed to the accident by keeping his elbow on the window-sill. It is common knowledge that passengers travel in buses with their elbows resting on the window-sill. This has been held to be not a negligent act. As early as 1960 the Punjab High Court in State of Punjab v. Guranwanti 1958-65 ACJ 110 (Punjab), observed that it is well-known that often passengers travel with their elbow resting on the window of the car. There is no prohibition against it. It was further observed that the plaintiff at that time of the morning considering the state of traffic cannot be said to have failed to use reasonable care for her safety by resting her elbow on the window.

9. On contributory negligence, Hals-bury's Laws of England, 3rd Edn., Vol. 28, p. 90, states thus:

A person is guilty of contributory negligence if he ought reasonably to have foreseen, if he did not act as a reasonable prudent man, he might hurt himself. The plaintiff is not usually bound to foresee that another person may be negligent unless experience shows a particular form of negligence to be common in the circumstances. If negligence on the part of the defendant is proved and contributory negligence by the plaintiff is at best a matter of doubt, the defendant alone is liable.

10. The standard of care expected of a person in such circumstances is what a reasonable man would have done. Just as actionable negligence requires the foresee-ability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might hurt himself, in doing a particular act.

11. House of Lords while considering the question of reasonable care held in *A.C. Billings and Sons Ltd. v. Riden* (1958) AC 240, thus:

"But in considering what a reasonable person would realise or would do in a particular situation, we must have regard to human nature as we know it, and if one thinks that in a particular situation the great majority of people would have behaved in one way, it would not be right to say that a reasonable man would or should have behaved in a different way. A 'reasonable man' does not mean a paragon of circumspection.""

11. Further the learned counsel for the appellant/petitioner relied on the judgment in *Delhi Transport Undertaking and another Vs. Smt. Krishna Wanti and another*, reported in 1973 AIR (Delhi) 196, wherein the Delhi High Court at paragraph No.15, has held as follows:

"15. The Punjab High court in a Bench decision in *State of Punjab v. Smt. Guran Wanti*, (1960) 62 Pun LR 571 observed:

"It is well known that often passengers travel with their elbows resting on the window of the car. there is no prohibition against it. The plaintiff at that time of the morning considering the state of traffic cannot be said to have failed to use reasonable care for her safety by resting below the window". It was also held: "At the time of the accident the plaintiff was traveling in the bus as a passenger. She had a right to expect to be carried safely to her destination. of the driver had been careful then in the ordinary course of things he would not have taken the bus to the extreme right of the road even to avoid a rick shaw. It is not usual for a bus to travel on the extreme right of the road. In the present case the driver a has done so. It is therefore for him to give reasonable explanation of the occurrence otherwise it must be held that he was guilty of negligence vide *Austin v. great Western Railway*. (1867) 16 Lt 320. approved in *Halliwell v. Venables*, (1930) 143 Lt 215. There is no such

explanation forthcoming on this record. It was the duty of the defendants to take reasonable care that the passengers traveling in the bus do not receive Injuries during the journey. To achieve this object it is necessary for the driver to be no the look out of any possible obstruction on the road to even in the air and to taken reasonable steps to avoid the obstruction without causing any injury to the passengers (vide Radley v. London Passenger Transport Board. (1942) 1 All Er 433). In my opinion the defendants in the present case failed to take this case. and therefore it must be held that there was negligence".

12. So, applying the principles set out already by various High Courts, in this case also, it cannot be said that in the alleged accident, the act of the petitioner could be held responsible. Accordingly, this Court is of the opinion that in the alleged accident, there is no contributory negligence on the part of the petitioner.

13. With regard to the quantum of compensation estimated by the tribunal, this Court do not find any reason to interfere. The claims tribunal has awarded a reasonable compensation for the injuries sustained. In view the finding of this Court that the appellant/petitioner is not guilty of contributory negligence, he will be entitled to get the entire compensation estimated by the tribunal, i.e. Rs.1,56,025/-. In other words, the appellant will be entitled to get Rs.20,000/- under the head pain and sufferings for which the tribunal estimated Rs.8,000/- only.

14. For the reasons stated above, the appeal is allowed and in modification of the award of the claims tribunal, it is ordered as follows:

(i) Respondents are directed to pay a further sum of Rs.12,000/- together with Rs.1,56,025/- with interest at 7.5% per annum from the date of petition till the date of realisation. However, as per the order of this Court dated 26.11.2010 made in M.P.No.2 of 2010 in CMA SR.No.17845 of 2009, the claimant is not entitled to interest for the period of delay i.e. 320 days in preferring this appeal.

(ii) The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of Claimant through RTGS/NEFT within a period of one week.

(iv) Appellant/claimant is directed to pay the Court fee for the enhanced compensation, if any.

15. In the result, this Civil Miscellaneous appeal is allowed. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ars
To

The IV Judge,
Small Causes Court,
Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras-600 104.

+1cc to Mr.Anand and Suryas, Advocate Sr.21300
+1cc to Mr.G.Udaya Sankar, Advocate Sr.21221

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